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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/519,434

07/22/2005

Andreas Eckel

941-012025-US (PAR)

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02/13/2007

PERMAN & GREEN

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EXAMINER

MCELHENY JR, DONALD E

ART UNIT

PAPER NUMBER

2857

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

02/13/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/519,434

Applicant(s)

ECKEL, ANDREAS

Examiner

Donald E. McElheny, Jr.

Art Unit

2857

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01/11/07.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-23 is/are allowed.
- 6) ☒ Claim(s) 24-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on _____ is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 24-31 are again rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter and the claimed invention lacks patentable utility.

Please be advised that the "Interim Guidelines for Examination of Patent Applications for Subject Matter Eligibility" was signed on Oct 26, 2005 and posted on the uspto.gov website. The link is:

<http://www.uspto.gov/web/offices/pac/dapp/ogsheet.html>

Also see updated MPEP 2106, which covers algorithm and computer implemented inventions and the manner in which they may be claimed and find statutory basis under 35 U.S.C. 101.

While the claims do not always positively and clearly recite and require any actual computer implementation, even if/when there were such claimed basis they would still fail to meet the latest Guidelines criteria for having statutory basis in any type (e.g. method, apparatus, medium, etc.) of claimed invention as the instant claims stand.

These claims fail to meet the minimal requirement of a useful, concrete and tangible result of a real physical world interactive end result supported by any algorithm steps, or structure supporting such calculated step with an end result, where the end result limitation/data supports the invention being used in a practical useful, concrete and tangible real world combination manner. As the above updated Guidelines now state, structure (e.g. input devices, sensors, databases, etc.) of any type that supply

data for calculations (done by human and/or computer) do not make the claimed invention fall within statutory subject matter until there occurs explicitly a claiming of and meeting the actualization in the real world of a useful, concrete and tangible result.

Note that algorithmic based inventions, especially mathematical or abstract ideas based, where performed using a computer, such computerization still may not make an overall computerized system fall into permitted patentable statutory subject matter. The instant claims fail to explicitly and clearly set forth any end result physical world transformation of any data calculations so as to relate to the real world as/for a tangible practical use. The step(s) may still be at best just internal computer calculations absent any tangible real world relationship. External supply to other structural systems, to a user via display or printing, or some other practical tangible result with the clear useful purpose of such "output", must somehow be minimally claimed for establishing statutory subject matter.

Response to applicants' arguments:

Applicants merely argue that "Establishing the altitude of the mobile communication terminal ... is clearly a useful, concrete and tangible result." However, as claimed, and admitted by applicants' remark, this is only another calculation. Mere calculation results of arguably inventive algorithms that lack some physical transformation of the calculation as a practical use into the real world, or a useful, concrete and tangible result into the real physical world, remain under the current 101 statutory subject matter Guidelines as non-statutory subject matter.

3. Claims 1-23 stand allowed.

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald McElheny, Jr. whose telephone number is 571-272-2218. The examiner can normally be reached on Monday-Thursday from 7:30 to 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hoff Marc, can be reached on weekdays at telephone number 571-272-2216. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Donald E. McElheny, Jr.
Primary Examiner
Art Unit 2857